

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

MFA.No. 873 of 2001(B)

**OP(MV).1946/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
ERNAKULAM**

APPELLANT: CLAIMANT

**K.M.SURENDRAN, AGED 37, S/O.MADHAVAN,
KOLLASSERIL HOUSE, CHAVADY,
THIRUMALA BHAGAM P.O.,
THURAVOOR, ALAPPUZHA DISTRICT.**

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS: RESPONDENTS

- 1. M.KURUVILLA, S.O.KURUVILLA,
MOOSARIATHU HOUSE, ULLANNOORE PO.,
KULANADA VILLAGE, KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT.**
- 2. S.SURENDRAN, S/O. SUBBAYYAN,
T.C. 12/903, BARTEN HILL,
KUNNUKUZHI, TRIVANDRUM.**
- 3. UNITED INDIA INSURANCE CO. LTD.,
COCHIN 16.**

BY ADV. SMT.NARAYANIKUTTY CHETTOOR

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 29/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

MFA. NO.873/2001

ORDER ON CMP. NO.6917/2001 IN MFA. NO.873/2001

DISMISSED

29.11.2007

SD/- J.B.KOSHY, JUDGE

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.S. TO JUDGE

tss

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 873 of 2001

Dated this the 29th day of November, 2007

Judgment

Koshy, J.

Appellant at the age of 37 met with an accident by which he sustained personal injuries. He filed an application for compensation claiming Rs.3,28,500/- as compensation. When the case came up, the advocate for the claimant and insurance company endorsed that the matter is settled for Rs.65,000/-. Hence, award was passed for Rs.65,000/- on the basis of the settlement. An I.A. was filed to set aside the award (reviewing the award) as the party has not signed the settlement. That I.A. was allowed. After allowing the I.A. Rs.65,000/-which was deposited on the basis of the settlement awarded by the insurance company was returned/refunded to the insurance company. But, insurance company again deposited the amount. Claimant also filed a petition to amend the original claim. That was also allowed. Documents were produced. But, award was passed rejecting the claim saying that since the settlement award was once passed, successor of the

presiding officer who passed the impugned award had no right to re-open the same. The presiding officer who decided the matter in 2001 was not an appellate authority over the decision of his previous officer. The settlement award was reviewed finding that a mistake has happened as the claimant did not sign the settlement. Claimant has to sign the settlement in Lok Adalath awards also. In any event, if the setting aside and review of the settlement award was incorrect, the aggrieved party ought to have challenged the same in the High Court. But, that was not done and setting aside of the settlement award has become final. Further, claim was also amended. In the above circumstances, after re-opening the award, claim cannot be dismissed and the successor presiding officer cannot say that the proceedings of the earlier officer was not correct and the award which was already set aside will govern the field. The award as per the settlement already stands set aside. In the above circumstances, we set aside the impugned award and remand the matter for consideration on merit.

Appeal allowed by way of remand. We are not expressing any opinion on the merits of the matter. Amount has to

be assessed on the basis of evidence adduced in the case. Parties shall appear before the tribunal on 9.1.2008.

Documents were already filed and the tribunal is directed to dispose of the matter as expeditiously as possible as the accident occurred in 1995.

**J.B.KOSHY
JUDGE**

**K. HEMA
JUDGE**

vaa

**J.B. KOSHY AND
K.HEMA,JJ.**

M.F.A. No. 873 of 2001

Judgment

Dated:29th November, 2007